

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
333 Queen Street
Honolulu, Hawaii 96813

July 22, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

REQUEST FOR APPROVAL TO INITIATE RULE-MAKING PROCEEDINGS TO AMEND HAWAII ADMINISTRATIVE RULES, SECTION 13-231-26, RELATING TO PRINCIPAL HABITATION PERMITS, TO ALLOW A PERSONAL PARTNER TO RESIDE ON VESSELS AT THE ALA WAI AND KEEHI SMALL BOAT HARBORS (SEE EXHIBIT A); POSSIBLE EXECUTIVE SESSION PURSUANT TO HRS §92-5(a)(4).

STATUTE:

Sections 200-2, 200-4, 200-9 and 200-10, Hawaii Revised Statutes.

PURPOSE:

Amend the Hawaii Administrative Rules ("HAR") for boating to allow one "personal partner" of a vessel owner holding a principal habitation permit the ability to reside on the vessel, adding the "personal partner" category to the current allowable residents of : vessel owner, vessel co-owner, spouse, and their legal dependents. ("Personal partner" is defined in the proposed rule amendment.)

REMARKS:

The American Civil Liberties Union contacted the department concerning a rule change in behalf of an unmarried couple and a same sex couple. The department considered the position of the ACLU and agreed to request authority from the Land Board to begin the rule-making process. The language of the proposed amendment is the department's language, which has been preliminarily approved by the Department of the Attorney General.

The rule that pertains to principal habitation permits, HAR § 13-231-26, currently does not allow a "personal partner" (as opposed to a spouse) to reside on a vessel at the Ala Wai or Keehi small boat harbors, where principal habitation permits may be issued. Under the proposed rule amendment, a "personal partner" would be an individual considered to be a "significant other" of the principal habitation permittee who is not a relative by biology or adoption to the principle habitation permittee. While living together on the vessel, the principal habitation

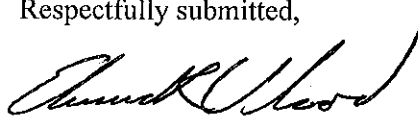
permittee and personal partner shall not have a landlord-tenant relationship. The department would retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittees at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

RECOMMENDATIONS:

That the Board:

1. Approve the initiation of rule-making for the proposed amendment to HAR § 13-231-26.
2. Approve the scheduling of a public hearing(s) on the island of Oahu on the proposed rule amendment as expeditiously as possible following the Governor's approval to conduct a public hearing.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



Laura H. Thielen
Chairperson and Member

Exhibit A

Section 13-231-26, Hawaii Administrative Rules, is amended to read as follows:

§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi boat harbor may use that vessel as a place of principal habitation if the owner has applied for and secured:

- (1) A principal habitation permit; and
- (2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility;
- (4) The area leased to Ala Wai Marine, Ltd.; and
- (5) The moorings adjacent to the breakwater.

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit and harbor resident permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner of each, and their legal dependents may be issued a harbor resident permit. A "personal partner" is an individual considered to be a "significant other" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.

The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittees at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a harbor resident permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi boat harbor shall be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its moorings shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11.

[Eff 2/24/94; _____] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)